

§ 45A-4.1. (Expires March 1, 2021) Disbursement during certain declarations of emergency.

(a) Notwithstanding any other provision of this Chapter, in real estate transactions involving a one- to four-family residential dwelling or a lot restricted to residential use, a settlement agent may, in accordance with this section, make disbursement of closing funds prior to recordation of the deeds, deeds of trust, and any other required loan documents in the office of the register of deeds.

(b) No disbursement of closing funds prior to recordation shall be made under this section, unless all the following apply:

- (1) On the date of closing, the office of the register of deeds where the deeds, deeds of trust, and any other required loan documents are to be recorded meets the following criteria:
 - a. Is located within the emergency area under G.S. 166A-19.20.
 - b. Is closed to the public as a result of the declaration of emergency.
 - c. Is unable to accept documents for recording by any method, including in-person or electronic recording.
- (2) The lender's closing instructions authorize disbursement of closing funds prior to recording.
- (3) All parties agree in writing to all the following:
 - a. To waive the requirement of G.S. 45A-4 that the settlement agent shall not disburse closing funds until the deeds, deeds of trust, and any other required loan documents are recorded in the office of the register of deeds.
 - b. That they acknowledge that the recordation date may not be known on the date of closing and the date of recordation by the settlement agent is governed by subsection (d) of this section.
 - c. That they are aware of the risks and implications of proceeding with disbursement of closing funds and, if applicable, transfer of possession of property prior to recordation.
 - d. That after disbursement of closing funds and prior to recordation, no party to the transaction will take any action to impair the quality of the title in law or equity.
 - e. Any other terms the parties or the closing instructions require as a condition of disbursement of closing funds prior to recording.
- (4) The settlement agent does all the following:
 - a. Complies with all conditions of the closing instructions.
 - b. Procures a commitment of title insurance providing for title insurance that includes indemnity coverage for the gap period between the date of disbursement of closing funds and the date of recordation of the necessary documents.
 - c. Updates the applicable title from the date of the preliminary title opinion to the time of disbursement using those public records reasonably available to the settlement agent on the date of disbursement.

(c) In all transactions under this section in which the settlement agent makes a disbursement of closing funds prior to recordation, the settlement agent shall hold in a fiduciary capacity until the time provided in subsection (d) of this section all deeds, deeds of trust, and any other required loan documents that are to be recorded.

(d) The authority under this section for the settlement agent to disburse closing proceeds prior to recordation of the deeds, deeds of trust, and any other required loan documents shall G.S. 45A-4.1

terminate on the earlier of the date the office of the register of deeds reopens for the transaction of public business or begins to accept documents for electronic recording. Within three business days of the time set forth in this subsection, the settlement agent shall record all deeds, deeds of trust, and any other required loan documents being held under subsection (c) of this section and shall immediately notify all parties that the documents have been recorded. (2020-3, s. 4.12(a); 2020-80, s. 2.8.)